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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/724,025	11/28/2000	David Herring	3882-3	6894

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EXAMINER

COSIMANO, EDWARD R

ART UNIT	PAPER NUMBER
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3629

DATE MAILED: 03/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/724,025

Applicant(s)

HERRING ET AL.

Examiner

Edward R. Cosimano

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– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 November 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-61 is/are pending in the application.
- 4a) Of the above claim(s) none is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-26 and 28-61 is/are allowed.
- 6) ☒ Claim(s) 27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 November 2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2,4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

1. Applicant should note the changes to patent practice and procedure:
 - A) effective December 01, 1997 as published in the Federal Register, Vol 62, No. 197, Friday October 10, 1997; and
 - B) effective November 07, 2000 as published in the Federal Register, Vol 65, No. 54603, September 08, 2000.
2. The use of various trademarks, for example, "NETCOOL®", or "Windows NT", in the paragraph located:
 - (1) at page 2, lines 5-14, "A number of tools ... NETCOOL® ... NETCOOL ... NETCOOL ... network resources can be shifted as need to cover outages.";
 - (2) between page 16, line 21, and page 17, line 8, "One embodiment of the present ... NETCOOL ... NETCOOL ... operations center regarding Windows NT environments.";has been noted in this application. Any trademarks should be capitalized wherever they appear and be accompanied by the generic terminology.
- 2.1 Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.
3. The drawings are objected to because
 - A) the drawings lack figs. 29-34 as described in the context of the paragraph at page 13, lines 12-13, "Figs. 23-34 are graphical representations of techniques for predicting the cost of an outage during the outage in accordance with embodiments of the present invention;".
- 3.1 A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.
- 3.2 Applicant is required to submit a proposed drawing correction in reply to this Office action. However, formal correction of the noted defect may be deferred until after the examiner has considered the proposed drawing correction. Failure to timely submit the proposed drawing correction will result in the abandonment of the application.

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4. The disclosure is objected to because of the following informalities:

A) applicant must update:

(1) the application data in the paragraphs at:

(a) page 1, lines 10—12, “This invention is related to ... 09/476,846 ... incorporated herein by reference in its entirety.”; and

(b) page 4, lines 1-11, “Furthermore, there is a need ... 09/476,846 ... which may differ in type or use.”;

with the current status of each of the referenced applications, e.g., --now abandoned--, or --now patent #?--, or --which is abandoned and now serial number #?--, etc.

B) as required by 37 CFR § 1.84(p(5)) and 37 CFR § 1.121(e) the specification lacks an explicit reference to the nature of:

(1) reference legend(s):

(a) 20 in fig. 2, as fig. 2 is described in the paragraphs between page 15, line 12, and page 16, line 20, “The service level or quality data ... widow encompasses the entire outage incident.”; and

(b) 36 in fig. 3, as fig. 3 is described in the paragraphs between page 16, line 21, and page 18, line 12, “One embodiment of the present invention ... probable cause engine 16 and cost of outage engine 46.”; and

(2) how the program proceeds after box(es):

(a) 62 of the flow chart of fig. 4 if the inquiry is “NO” as fig. 4 is described in the paragraph between page 18, line 13, and page 19, line 3, “The operation of one embodiment of ... output to the administrator in a suitable form.”;

(b) 86 of the flow chart of fig. 14 if the inquiry is “NO” as fig. 14 is described in the paragraph between page 28, line 22, and page 29, line 8, “Referring to Fig. 14. ... allocate the resources to the service outage, step 92.”; and

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(c) 102 of the flow chart of fig. 15A if the inquiry is "NO" as fig. 15A is described in the paragraph between page 29, line 22, and page 30, line 10, "If a service outage is ... to pick up the recovery in usage, subsequent to the outage."

In this regard, it is noted that merely mentioning a number with out mentioning the device or operation of the step relies on the drawing to provide support for the disclosure and not to aid in the understanding of the invention, as is the purpose of the drawings (37 CFR § 1.81(a,b)).

C) the following errors have been noted in the specification:

(1) as can be seen in figs. 23 & 24 and from the context of the paragraph at page 13, lines 12-13, "Figs. 23-34 are graphical representations of techniques for predicting the cost of an outage during the outage in accordance with embodiments of the present invention;", at line 1 of this paragraph "23-34" should be -23-24--.

(2) the brief description of the invention contains:

(1) a description of missing figs. 29-34, see the paragraph at page 13, lines 12-13, "Figs. 23-34 are ... embodiments of the present invention;"; and

(2) two separate and distinct descriptions of figs. 25-28 ,see the paragraphs at page 13, lines 12-18, "Figs. 23-34 are ... embodiments of the present invention."

(3) as can be seen in fig. 3 and from the context of the paragraph at page 17, lines 9-17, "Further, a set of service ... meters 26A track activity on different services 34 ... meters 26B ... meter 26B... meter 26B ... meter 26B ... as known to those skilled in the art."; at:

(1) line 3 of this paragraph "26A" should be -26B--; and

(2) lines 6-9 each occurrence of "26B" should be -26A--.

Appropriate correction is required.

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5. The specification and drawings have not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification or drawings. Applicant should note the requirements of 37 CFR § 1.74, § 1.75, § 1.84(o,p(5)), § 1.121(a)-1.121(f) & § 1.121(h)-1.121(i).

6. Claim 27 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6.1 Since both claims 15 & 27 depend from claim 1 and claim 27 is a duplicate of claim 15, it appear that the dependency of claim 27 is incorrect and hence the intended scope and meaning of claim 27 can to be determined.

6.2 For the above reason, applicant has failed to particularly point out what is regarded as the invention.

7. The following is an Examiner's Statement of Reasons for Allowance over the prior art:

A) the prior art, for example:

(1) The IBM Technical Disclosure Bulletin, which discloses the use of statistical analysis to predict the cause of a fault.

(2) Koyama et al (5,315,502), which disclose the statistical analysis of stored event data so as to aid in the identification and causes of faults.

(3) either Whitney (5,646,864) or Yemini et al (5,661,668) or Elsley (5,949,676), which disclose the statistical analysis of stored event data so as to aid in the identification and prediction of faults.

(4) Edens (5,984,507), which discloses using statistics to analyze event data over a period of time in order to detect when maintenance should be performed.

(5) Stilp et al (6,483,460), which discloses storing event data and time stamps for the event data so as to aid in the determination of a fault.

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B) however, in regard to claims 1, 16, 29, 29 & 61, the prior art does not teach or suggest using a monitored change in service as detected by monitoring the service quality and a time stamp of the monitored data to:

(1) define a service change window that encompasses at least part of a service outage; and

(2) to determine the probability that a monitored event within the service change window caused the change in service.

Claims 2-15, 17-26 & 27 meet the criteria for the same reason.

C) however, in regard to claims 30, 47 & 48, the prior art does not teach or suggest using a monitored change in service as detected by monitoring the service quality to determine the cost of an outage in the service by comparing the window of monitored service to the monitored service during an outage using a window of equal size. Claims 31-39 meet the criteria for the same reason.

D) however, in regard to claim 40, the prior art does not teach or suggest using a monitored change in service as detected by monitoring the service quality to determine the loss in the service by comparing the window of monitored service to the monitored service after an outage in service. Claims 41-46 & 49-60 meet the criteria for the same reason.

8. Applicant must supply the articles mentioned in the paragraphs at:

(1) between page 20, line 21 and page 21, line 14, "Alternatively, the probable cause engine ... article is also incorporated by reference herein.";

(2) page 37, lines 7-15, "Usage Loss Curves for service ... incorporated by reference herein.".

9. Claim 27 would be allowable if rewritten to overcome the rejection under 35 U.S.C. § 112 and to include all of the limitations of the base claim and any intervening claims. As allowable subject matter has been indicated, applicant's response must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 C.F.R. § 1.111(b) and section 707.07(a) of the M.P.E.P.

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10. The shorten statutory period of response is set to expire 3 (three) months from the mailing date of this Office action.


11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edward Cosimano whose telephone number is (703) 305-9783. The examiner can normally be reached Monday through Thursday from 7:30am to 6:00pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss, can be reached on (703)-308-2702. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-1113.

11.1 The fax phone number for UNOFFICIAL/DRAFT FAXES is (703) 746-7240.

11.2 The fax phone number for OFFICIAL FAXES is (703) 305-7687.

11.3 The fax phone number for AFTER FINAL FAXES is (703) 308-3691.

02/12/03


Edward R. Cosimano
Primary Examiner A.U. 3629